

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

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Schools and Libraries Universal Service)	
Support Mechanism)	CC Docket No. 02-6
)	
)	

Comments of the Arkansas E-rate Work Group

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Pursuant to Section 1.51(c) of the Commission's rules, the State of Arkansas E-rate Workgroup (AEWG) respectfully submits these comments in response to the Commission's Second Report and Further Notice of Proposed Rule Making, CC Docket 02-6, FCC 03-101 (released April 29, 2003) ("FNPRM").

The AEWG is a working group representing public officials responsible for K-12 education, and public libraries in the State of Arkansas. The Arkansas E-rate Workgroup (AEWG) works on behalf of schools, public library patrons and other state agencies that serve to increase performance for pre-K-12, K-12 students as well as enhance public libraries services.

The AEWG includes representatives from the following Arkansas agencies: Department of Education, Department of Information Systems, Governor's Office, Office of Executive CIO, Arkansas State Library, and Little Rock Public School District. These individuals have offered ongoing support for schools, libraries and consortia to navigate the E-rate application process from the beginning, through multiple steps and, finally, to the acquisition of discounts and/or refunds on their telecommunications and advanced services purchases. The AEWG members have knowledge about the E-rate program because they help school districts and public libraries with their E-rate applications, are responsible for state consortia applications, regularly work with the Universal Service Administrative Company's Schools and Libraries Division ("Administrator"), and have a particularly good grasp of the program's history and intent. These comments reflect the best knowledge available about the E-rate program and were developed with the principles that support the Telecommunications Act of 1996.

Second Order Issues

Eligible Services

Educational Purpose

AEWG applauds the FCC's adoption of "educational use" language in the Second Order. This is a positive step in the simplification of the application process.

Duplicative Services

AEWG seeks clarification of the discussion presented in paragraphs 22 et seq. concerning *Funding of Duplicative Services*. AEWG seeks a clear definition of what is considered duplicative service. The discussion centers on waste, fraud and abuse through duplication of Priority Two requests. AEWG supports efforts to identify duplicative services in Priority Two requests.

There is a question as to whether “duplicative service” determinations are made prospectively (e.g., based solely upon applications) or upon delivery (e.g., based on a complete record). Since duplicative services are defined as “services that deliver the same functionality to the same population in the same location during the same time period,” a final determination cannot be made until services are installed and delivered.

Application Cycle Timing and Procurement Processes

The established Form 471 application filing window drives all applicants to file at least 6 months in advance of the earliest delivery of service and sometimes up to 24 months in advance of receipt of services. Therefore applicants must forecast their needs based on budget projections, perceived technology needs and their local procurement cycles. Given the lag in timing between the application filing period and funding decisions.

Migration Issues

The appearance of duplicative services may occur when technology upgrades are planned. Network migrations involve technologies (and contracts) which) that are meant to overlap for a period of time (to allow for an in-place testing of the new technology, for example. To not allow this kind of scenario would unfairly penalize states that are engaged in large scale upgrade or migration situations. We urge the FCC to clarify that these situations do not fall within the definition of duplicative services.

Certification

AEWG recommends a new certification on the form 471 stating that the services requested on this application are not duplicative services provided on another application, either an application by the entity or an application by a consortium on their behalf. When the appearance of duplicative service between an applicants’ 471 and a consortium’s 471, there should be a thorough investigation by knowledgeable PIA personnel. If it is determined that the request is duplicative, the consortium members 471 should have precedence over the individual applicant’s 471.

Wireless Services

AEWG applauds the FCC’s decision to make explicit the goal of supporting telecommunications in a technology-neutral way. We believe that this will simplify the application process, which not only benefits the applicants, but also makes review

easier for the Administrator. Additionally, this type of explicit support makes it easier for outsiders to understand the goals of the E-rate program and how the FCC is working to implement them.

AEWG does raise the question, however, whether the statement “Accordingly, basic telephone service, which includes mobile and fixed wireless service, is eligible for discounts...” is meant to be restrictive. That is, has the eligibility of wireless solutions that provide telecommunications beyond “basic telephone service” been changed by this Order?

Voice Mail

AEWG applauds the FCC’s decision to include voice mail as an eligible service.

Codification of 30 Percent Policy

While AEWG agrees that the 30% policy needs to be in rules, AEWG is concerned with the way that the rule is being interpreted by SLD. It appears that SLD is now using the 30% rule to deny applications where the available documentation supports 70% or less of the original request. This seems to be a new, more restrictive interpretation of the policy. Previously SLD would work to reconcile that inconsistency and reduce the FRN if necessary. The SLD is now denying the entire FRN; this has the unintended consequence of denying eligible services for which there is supporting documentation.

It should be noted, however, that AEWG would support denial in the case that the 30% was violated because the applicant either requested services it could not prove it was going to use, or the services contained 30% or more of ineligible components.

Clear guidance should be provided by Schools and Libraries prior to the filing window. In PY2003 the handling of the 30% rule changed during the review process. AEWG does not disagree with the change. AEWG does disagree with the timing of the change.

Choice and Timing of Payment Method

AEWG supports the FCC’s decision to make the choice of discount methodology (either discounted bills or reimbursement through the BEAR form) solely the applicants’, where such choice is available. This allows the applicant to determine which method of discounting most appropriately meets their budget and administrative needs.

Appeal Procedure

Deadline Extension

AEWG supports the FCC's decision to permanently extend the filing deadlines for appeals to 60 days from the date of the original decision. This will greatly help applicants prepare the necessary documentation. We also applaud the decision to use the postmark for appeals, as for other E-rate actions, to bring more consistency to the program.

Docket Number Change

AEWG supports the use of the new docket, FCC 02-6.

Funding of Successful Appeals

AEWG supports the FCC's decision to make explicit the goal of funding applications that are successfully appealed to the same extent as they would have been funded in the first instance. This brings equity to all applicants, especially those who must sometimes wait for over a year to bring an appeal to a successful conclusion. This also brings predictability to the funding decisions of the Administrator, which helps both applicants and their service providers in determining how to budget for future projects.

Suspension and Debarment

State procurement agencies and/or state networks may not have the ability under local law or regulation to act upon suspension or debarment determinations by the FCC under existing contracts or agreements. While we support the principles expressed in the Second Order, we must raise equity concerns with these determinations. It seems logically possible for a suspension or debarment to arise based on waste, fraud and abuse matters in one jurisdiction, but have no foundation in another. If this occurs, the second jurisdiction may not have a legal ability to act on debarment by terminating a contract or agreement with a service provider absent causation in the second jurisdiction. There are concerns about the mechanism by which such debarment would be effected by the second jurisdiction and the different requirements governing such mechanisms.

Therefore, AEWG supports inclusion of contract terms allowing suspension or termination of a local agreement when E-rate matters result in suspension or debarment by the FCC, as appropriate. This may only be accomplished at the time existing contracts are replaced or amended. Additionally, the FCC's debarment may not indemnify an applicant against claims of the debarred vendor, resulting in greater budgetary hardships for the applicant.

AEWG therefore suggests that if a suspension or debarment is put into action by the FCC, the Commission shall provide notice to all applicants that such action has occurred and will provide an opportunity for affected applicants to take necessary steps in accordance with local procurement laws and regulations to retain their E-rate participation (such as change vendors, terminate or amend contracts, etc.).

Given the concerns stated above and working within those constraints, AEWG supports the extension of suspension and debarment to applicants, service providers, and others (such as consultants) who willfully or repeatedly fail to comply with program rules.

FNPRM Issues

Utilization of Unused Funds

AEWG supports using unused funds as originally proposed in the First Order, beginning with the second quarter 2003, rather than waiting until Funding Year 2004 to begin this vital procedure.

Technology Plan

AEWG supports the proposed rule change that would allow applicants to indicate that their technology plan will be approved by an authorized body by the time the supported services begin or July 1 whichever is later.

Computerized Eligible Services List

AEWG supports a computerized list of eligible products and services in the internal connections category, as a pilot project. AEWG sees the availability of such a list as another step, along with the clarification to the definition of educational purposes, to make the application process easier.

AEWG is concerned, however, with the following:

- How such a list will interfere with state decisions as to how/when/what to procure?
- How applicants will indicate cost allocations or conditions on eligibility (such as use or location)?
- How such a list will drive individual applicant procurement decisions?
- The timing of availability of such list (will it be available at the time the Forms 470 are filed?)
- The extent to which the list is used as a “safe harbor” (will eligibility be supported in the application phase, the review phase, the invoice phase and through eventual audits?)
- How will the list be updated, to address obsolete products, upgrades, and new products?
- Would the list lead to more waste of funds as an applicant reviews the list and decides to request service because it now appears on this list?
- AEWG recognizes this as intent to make the filing process easier on the applicant. AEWG is concerned that maintaining such a list will be overly burdensome on the program administrator.

As to expanding the list to telecommunications services and Internet access, AEWG does not think that such a list will foster competition beyond the robust procurement processes the states already have in place. There is concern about geographic differences in product names and service offerings and whether the list can capture such differences.

While it appears that a computerized list of eligible products and services would offer value to the E-rate process, at this point there isn’t sufficient information or clarity about the proposal, to fully respond to the questions posed by the Commission.

Other Measures to Prevent Waste, Fraud, and Abuse

Adoption of Governmentwide Regulations

AEWG has no comment.

Debarring willful or repeated violators

AEWG supports the proposal not to debar persons who make inadvertent mistakes. We further support the proposal to separate “intent” from the proposed definition of willful, ensuring that actions other than fraud can be addressed.

Determination of violation resulting in debarment

AEWG supports addressing willful or repeated violations (as those are proposed to be defined) by giving the SLD as much flexibility as possible to ensure such violations are addressed as quickly as possible. AEWG seeks clarification on who would be debarred. Would the individual who filed the 471, the school or the school district be debarred? When referring to the service provider, will the individual or the company be debarred?

Notification procedures for debarment

AEWG has no comment on these proposals, because they are internal Commission procedures.

Other grounds for debarment

AEWG proposes that any debarment must be related to acts that result in fraud, waste or abuse in the E-rate program

Imputation for debarment

AEWG offers that many states have addressed imputation in their procurement regulations and statutes. These may serve as guidance to the Commission as it determines how to proceed on imputation.

Effect of debarment

AEWG is concerned that extending debarment from one service category (such as internet access) to another (such as telecommunications) may have the unintended consequence of penalizing innocent applicants who have only one available provider. Similarly, AEWG has concerns about the economic impacts on applicants and beneficiaries of extending the prohibition of participation to other universal service support mechanisms.

Changing service providers post-debarment

AEWG supports the idea that people should be held accountable for their actions. AEWG supports the proposal to allow SPIN changes for applicants whose service provider has been debarred before the SLD has made a funding commitment decision. However, AEWG urges the FCC and SLD to recognize that there may be additional procurement steps that need to be taken in order to comply with state and local processes, meaning that more time may have to be extended to the applicant in order to assure such compliance. AEWG is also concerned about the SLD's ability to identify applicants who may be complicit in service provider actions. AEWG supports the Commission in its desire not to create incentives for applicants to undermine the goals of the program. Finally, AEWG is compelled to point out that there is no real need to allow SPIN changes after the last date to submit an invoice has passed, acknowledging that deadline extension requests that are filed in a timely fashion are considered and have the effect of providing more time for the new service provider to submit invoices.

Staffing Issues

AEWG is concerned with the time it takes to review applications. While many applicants received their funding commitment early in PY2003, there are several who have not heard anything. There are applicants who are still waiting for decisions on PY2002 applications. AEWG is concerned about the delays in contacts made to the applicant. The applicant receives a request for information and responds within the mandatory timeframe. After responding, the applicant does not hear from anyone for several months. AEWG recommends the Schools and Libraries personnel be increased, and that the personnel become full-time employees. There should be a team of reviewers specializing in complex applications and a special team of reviewers for consortia and State Network applications.